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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.79 of 2004

Commissioner of Income-tax
Coimbatore. ... Appellant

Vs.

The Official Liquidator
High Court
Madras. ... Respondent.

Respondent is substituted as above from "South India Viscose Limited, Coimbatore" as per order of Court dated 7.8.2007 made in T.C.M.P.No.48 of 2007.

Tax Case Appeal No.79 of 2004 is filed under Section 260-A of the Income-tax Act, 1961 against the orders of the Income-tax Appellate Tribunal, 'A' Bench, Chennai made in I.T.A.No.1130/Nds/1989 dated 29.7.2002 for the assessment year 1975-76 against the order of the Commissioner of Income-Tax (Appeals), Coimbatore dated 8.2.1989 and made in I.T.Appeal No.226-C/88-89 against the order of the Inspecting Assistant Commissioner of Income Tax (Assessment) Range-1,Coimbatore, dated 28.3.1988 and made in PA No.CN-0158/75-76 IAC(A) R.I.

For Appellant : Mr.Muralikumaran,
Sr.Standing Counsel for
Income-tax.

For Respondent : Mr.A.Thiagarajan

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JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The assessee's assessment order in respect of the assessment year 1975-76 has been revised more than once in order to give effect to the order of the Commissioner of Income-tax (Appeals) and Appellate Tribunal and also further modified on rectification of the mistakes. The amount claimed as a deduction in a sum of rs.3,00,034/- on account of commission paid to one P.M.Traders was rejected. The assessee claimed that the commissions were paid for sale of wood pulp and purchase of caustic soda from National Rayon Corporation Limited. The Assessing Officer verified the assessment records of both recipients of the commission and also made enquiries through National Rayon Corporation Limited, who denied having any middle man to the business. The assessing officer accordingly disallowed the payment of commission treating it as bogus. On appeal, the Commissioner of Income-tax (Appeals) upheld disallowance with respect to the payment to P.M.Traders. The assessee filed an appeal against the order of the Commissioner of Income-tax (Appeals) to the Income-tax Appellate Tribunal. The Tribunal has allowed the appeal on the ground that the receipt of commission has been accepted by the recipient by its letter and in the absence of any method to discard the admission the deduction should have been granted. Aggrieved by the said order of the Appellate Tribunal, the revenue filed this appeal and the appeal was admitted on the following substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction of the commission payment by the assessee on the ground that the commission agents were not examined, in spite of the fact that National Rayon Corporation had clearly said that no middlemen were engaged in the transaction?
>
> 2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction of the commission payment by the assessee, when it was clearly a colourable device to fund extra commercial considerations?

2. The learned counsel appearing for the revenue vehemently contended that the reasoning given by the assessing officer, which is confirmed by the Commissioner of Income-tax (Appeals) are unassailable reasons. The other fact that the National Rayon Corporation has given a statement that no middle men were engaged by them in the transaction would also go to prove the bogus claim of the assessee that finding would not have been reversed by the Tribunal.

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3. On the contrary, the learned counsel appearing for the respondent Company, which is under liquidation, has submitted that the Tribunal has passed an order after taking note of the statement given by the person to whom the commission has been given. The Tribunal further taken into consideration of the fact that earlier the Tribunal has passed an order of remittal with a direction to the assessing officer to enquire the person i.e., P.M.Traders to whom the commission has been paid. That direction has not been complied with by the assessing officer. On the contrary, the assessing officer has enquired some of the officers of the National Rayon Corporation, which is not a direction given by the Tribunal. He further contended that in respect of the subsequent assessment years, the Tribunal has taken the same view as taken in the present case, which has not been agitated by the Department, rather it is accepted by the Department. When that being the position, for the present assessment year, they cannot take a different view.

4. We heard the argument of the learned counsel on either side and perused the materials on record.

5. The learned counsel appearing for the revenue has fairly submitted that in respect of the subsequent assessment years, he is not in a position to place before this Court any material as to whether the matters have been taken on appeal, as he was also not sure whether appeals have been filed or not. However, the learned counsel appearing for the Company under liquidation submits that till date, no notice has been received by the Company under liquidation in any case in respect of the subsequent assessment years. From that, it is clear that for the subsequent assessment years, the revenue has accepted the finding arrived at by the Tribunal.

6. In addition to that, one more factor needs to be stated is that in respect of the assessment year, when the matter was originally carried to the Income-tax Appellate Tribunal, the Tribunal after taking into consideration of the submission formed an opinion that the matter requires fresh investigation on the ground that as per the records, the partnership deed of the P.M.Traders executed in April 1986 was to take effect from 1.1.1984, which was not taken into account by the Income Tax Officer, who had seen the document. In addition to that, the assessing officer has not considered the letter dated 31.12.1975 submitted by the P.M.Traders to the effect that they did receive the commission from the assessee and verified the same with the P.M.Traders. The assessing officer also failed to verify whether the partnership was for the purpose of exploiting the agreement with the assessee for the purpose of business. The Tribunal ultimately

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set aside all orders of the authorities below and remitted the matter to the Income-tax Officer for making fresh assessment after a proper investigation by examining the agent – the P.M.Traders after giving the assessee an opportunity of being heard.

7. On remittal also, from the records, it could be seen that the assessing officer has not even taken the pain of verifying the letter dated 31.12.1975 issued by P.M.Traders accepting the receipt of the commission from the assessee. However, the assessing officer thought it fit enough to inquire with one of the Officers of the National Rayon Corporation. The assessing officer on the basis of the statement recorded from one of the officers of the National Rayon Commission has rejected the claim for payment of commission to P.M.Traders.

8. It is well established legal principle that in the hierarchy of the statutory authorities, when the higher fact finding authority remitted the matter with a direction to the lower authority to follow certain procedure, so as to be within the statutory provision, the lower authority has to make that exercise as directed by the Tribunal. In this case, as rightly pointed out by the counsel for the assessee as well as in the order of the Tribunal, the Income-tax Officer has totally flouted the direction to verify with the letter dated 31.12.1975 by which the P.M.Traders has accepted that they did receive the commission from the assessee. On the other hand, much reliance has been placed by the authorities below on the statement given by one of the officers of the National Rayon Commission.

9. Having regard to the totality of the circumstances of the case, and with particular reference to the Tribunal Order, which has extracted the orders made by the Tribunal in respect of the assessee's case in the subsequent years to the effect that the claim of the assessee in regard to payment of commission to P.M.Traders deserves to be upheld, the further factual position as to the non-verification of the letter dated 13.12.1975 issued by P.M.Traders, who by that letter accepted the receipt of commission, we do not find any irregularity in the order of the Tribunal.

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10. After perusal of the records, we are of the view that the order of the Tribunal requires no modification and the questions of law framed were answered in affirmative against the revenue and the appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar,
Income-tax Appellate Tribunal
III Floor, Rajaji Bhavan, Besant Nagar,
Chennai.

2. The Commissioner of
Income-tax
Coimbatore.

3. The Inspecting Asst.Commissioner of
Incometax (Assessment) Range-I
Coimbatore

4. The Commissioner of Income-tax
(Appeals,)Coimbatore

5.The Official Liquidator,
High Court, Chennai.

+1cc to Mr.N.Muralikumaran SSC for IT Sr 63644

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km/1.11.

Tax Case (Appeal)
No.79 of 2004

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